

The respondent and its insurance carrier contend Judge Fuller erred and argue that (1) claimant failed to prove that he sustained either an accident or personal injury in the September 1995 incident, (2) claimant failed to prove that the re-herniations in the lumbar spine and resulting increased disability were the natural and probable result of the September 1995 accident rather than the result of a later non-work-related accident; and (3)

claimant's permanent partial general disability should be limited to the functional impairment rating, if he is awarded any.

Conversely, claimant argues that Judge Fuller's Award should be affirmed.

The only issues before the Appeals Board on this appeal are:

1. Did claimant sustain personal injury by accident arising out of and in the course of employment?
2. What is the nature and extent of injury and disability?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes the Award should be affirmed. The Board agrees with, and adopts as its own, the findings and conclusions stated by the Judge in the Award.

On September 25, 1995, Mr. Greenlee injured his back while reaching underneath a wrecker to flip a chain. Dr. Pedro A. Murati's uncontroverted testimony establishes that the activity that Mr. Greenlee was performing at the time of the accident placed his back in an awkward position and that the incident worsened Mr. Greenlee's preexisting back condition.

An injury is compensable under the Workers Compensation Act although the accident only serves to aggravate a preexisting condition.¹ The test is not whether the accident caused the condition, but whether the accident aggravated or accelerated a preexisting condition.²

The Board affirms the finding that Mr. Greenlee is permanently and totally disabled. The greater weight of the evidence indicates that he is essentially unemployable despite the back surgeries that he underwent in January 1996 and October 1997. When he testified in July 1999, Mr. Greenlee was unable to drive because of leg spasms and was continuing to take morphine-based pain medication. Further, Dr. Murati's medical records generally substantiate Mr. Greenlee's inability to work.

The Appeals Board has carefully considered the argument that Mr. Greenlee sustained a later accident that is responsible for his present condition rather than the September 1995 incident. But the Appeals Board disagrees with that argument. First, the record does not establish that Mr. Greenlee sustained a second accident following the September 1995 injury. Second, based upon the uncontroverted expert medical opinions of Dr. Murati, the Board finds that the re-herniations in Mr. Greenlee's lumbar spine for which

¹ Odell v. Unified School District, 206 Kan. 752, 481 P.2d 974 (1971).

² Woodward v. Beech Aircraft Corporation, 24 Kan. App. 2d 510, 949 P.2d 1149 (1997).

he was re-operated in October 1997 were the direct and natural result of the September 1995 accident.

At Dr. Murati's deposition, the parties introduced the doctor's entire medical file consisting of several hundred pages regardless of their importance. For future reference, the parties are requested to introduce only those records that are both relevant and material to the disputed issues.

AWARD

WHEREFORE, the Appeals Board affirms the October 6, 1999 Award entered by Judge Pamela J. Fuller.

IT IS SO ORDERED.

Dated this ____ day of March 2000.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Lawrence M. Gurney, Wichita, KS
 Wendel W. Wurst, Garden City, KS
 Pamela J. Fuller, Administrative Law Judge
 Philip S. Harness, Director